

RECEIVED
CENTRAL FAX CENTER

MAR 05 2007

REMARKS/ARGUMENTS

In view of the foregoing amendments and the following remarks, the applicant respectfully submits that the pending claims comply with 35 U.S.C. § 101 and are not anticipated under 35 U.S.C. § 102. Accordingly, it is believed that this application is in condition for allowance. If, however, the Examiner believes that there are any unresolved issues, or believes that some or all of the claims are not in condition for allowance, the applicant respectfully requests that the Examiner contact the undersigned to schedule a telephone Examiner Interview before any further actions on the merits.

The applicant will now address each of the issues raised in the outstanding Office Action. Before doing so, the undersigned would like to thank Examiner Jones for courtesies extended during a brief telephone interview on March 5, 2007. During the telephone interview, the undersigned and Examiner Jones discussed amendments to overcome the § 101-based rejections of claims 20-33, 60 and 61. In particular, claims 20, 29, 60 and 61 were discussed. It was agreed that changing "machine-executable" to "computer-executable" and "instruction" to "computer-executable instruction" would obviate the § 101-based rejections.

The undersigned also spoke with Examiner Jones on November 26, 2006. During that telephone interview, the undersigned noted that the cited art did not show that a network path determination constraint is expressed in the form of a program including one or more executable

instructions (or a similar recitation), as is recited in various independent claims.

Objections

Claim 72 is objected to as being dependent from a rejected base claim, but would be allowable if rewritten in independent form to include the recitations of the base claim and any intervening claims.

Claim 72 has been rewritten in independent form to include the recitations of base claim 70. There were no intervening claims. Since claim 72, as amended, is now in condition for allowance, this objection should be withdrawn.

Rejections under 35 U.S.C. § 101

Claims 20-35 are rejected under 35 U.S.C. § 101. The applicant respectfully requests that the Examiner reconsider and withdraw this ground of rejection in view of the following.

Claims 34 and 35 have been canceled. Thus, this ground of rejection is rendered moot with respect to those claims.

Independent claims 20, 29, 60 and 61, and dependent claim 31, have been amended to change "machine-executable" to "computer-executable" and "instruction" to "computer-executable instruction." During the telephone interview on March 5, 2007, Examiner Jones indicated that such amendments would overcome the § 101-based rejections. Therefore, the applicant

respectfully requests that the Examiner withdraw this ground of rejection.

Rejections under 35 U.S.C. § 102

Claim 70 is rejected under 35 U.S.C. § 102(e) as being anticipated by over U.S. Patent No. 6,721,269 ("the Cao patent"). The applicant respectfully requests that the Examiner reconsider and withdraw this ground of rejection in view of the following. Since claim 70 has been canceled, this ground of rejection is rendered moot.

Entry of Amendments

Since the amendments merely cancel rejected claims, rewrite an objected to claim in independent form, and address issues under 35 U.S.C. § 101, they place the application into condition for allowance (or at least better form for appeal) and raise no new matters. Therefore, these amendments should be entered.

RECEIVED
CENTRAL FAX CENTER

MAR 05 2007

Conclusion

In view of the foregoing amendments and remarks, the applicant respectfully submits that the pending claims are in condition for allowance. Accordingly, the applicant requests that the Examiner pass this application to issue.

Respectfully submitted,

March 5, 2007

John C. Pokotylo
John C. Pokotylo, Attorney
Reg. No. 36,242
Tel.: (732) 542-9070

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper (and any accompanying paper(s)) is being facsimile transmitted to the United States Patent Office on the date shown below.

John C. Pokotylo

Type or print name of person signing certification

John C. Pokotylo
Signature

March 5, 2007
Date